
Minutes of Extraordinary General Meeting

PRESENT PERSONALLY: Gilchrist & Callan (4), Lloyd (42), Jeanneret (48), Peers (55), Gregory (56), Scott (57), Pressley (68), Ford & Wilcox (77), Tonkin (85), Thiel-Sirett (93), Nielsen & Trollip (94 & 142), Harrington (95), Napier (102 & 168), Meredith (104), Williams & Thomson (114 & 150), Thomson & Williams (115), Baxa (121), Anderson (122 & 162), Moore (125), Harding (126 & 161), Beck (127 & 166), Ferrier (135 & 159), Robins (136 & 156) and Modolo (138 & 147)

PRESENT BY PROXY: To R Harding / Chair: Hobson (26), Barbrina Pty Ltd (32), Green & Fitzgerald (40), Bulie (47), Raka Enterprises Pty Ltd (45), Wellington (49), Newman (61), Falzon & Ubilla (63), Byrne (67), Gilbert (72), Harris (73), Simonsen (88), Crook (89), Rogan & Smith (108 & 151), Crombie-Brown (113), Beck (133 & 153), Beck (139 & 169), Wellington (130 & 152), Birchley Cross Pty Ltd (140 & 141)

To T Trollip / Secretary: Clarke (12), Borlase (15), Corbett (19), Zordan (20), Tennant & McLean (23), Druc (39), Brener (62), Hazelton & Archer (65), Keats (75), Liotta (80), Pollard & Clayton (84), MacKinnon (96), Parkinson (107)

To K Thiel-Sirett: Ward (18), Rogan & Smith (108)

To M Meredith: Regan (44), Coppleson (81)

To R Beck: Lu (31, 44, 100 & 144)

To S Williams: Malasarda Pty Ltd (123)

To J McDonald: Pinkerton (17)

To D Stanger: Tonkin (74)

IN ATTENDANCE: E Francis & D Stanger (FMBS), J McDonald (Linders)

APOLOGIES: Mr & Mrs Tonkin (74)

CHAIRPERSON:

R Harding chaired the meeting.

AMENDMENT TO THE ORDER OF BUSINESS:

It was moved and **RESOLVED** to deal with **Motion 3** per the Agenda as the second item of Business.

1. MINUTES:

RESOLVED that the Minutes of the last General Meeting be confirmed as a true and accurate record of the proceedings of that meeting.

**3. BYLAW,
LICENCE
AGREEMENT:**

DISCUSSION to the **MOTION**

A **Motion to Adjourn the Meeting** pending the provision of further legal advice was proposed by Lot 94 and seconded by Lot 95 (**ADJOURNMENT MOTION**)

Being the addition of the following after the final paragraph in **Motion 3**

'...be adjourned or postponed pending the EC (Executive Committee) taking proper legal advice and reconsidering its current recommendation to owners.'

DISCUSSION to the **ADJOURNMENT MOTION**

DISCUSSION to the **LICENCE AGREEMENT**

The **ADJOURNMENT MOTION** was put to the Meeting and was **LOST**.

SPECIALLY RESOLVED pursuant to section 47 of the *Strata Schemes Management Act, 1996* (NSW) that The Owners – Strata Plan No. 64622 make an additional by-law in the following terms:

BY-LAW No 48 **Granting Licences over Common Property**

PART 1

GRANT OF RIGHT

In addition to the powers, authorities, duties and functions conferred or imposed upon the Owners Corporation by the Act and the by-laws applicable to the Strata Scheme, the Owners Corporation shall have the additional power, authority, duty and function to enter into a Licence granting rights over all or part of the common property with an Occupier or Third Party on the terms and conditions set out in Part 3.

PART 2

DEFINITIONS & INTERPRETATION, BY-LAW TO PREVAIL

Definitions

In this by-law, unless the context otherwise requires:

- (a) **Act** means the *Strata Schemes Management Act, 1996* (NSW).
- (b) **Authority** means any government, semi government, statutory, public, private or other authority having any jurisdiction over the Lot and/or common property including the Council.
- (c) **Council** means the City of Sydney Council.
- (d) **Licence** includes any licence or sub-licence.
- (e) **Lot** means any lot in Strata Plan 64622.
- (f) **Occupier** means any occupier, licensee or lessee of a Lot.
- (g) **Owner** means the Owner of the Lot.

- (h) **Strata Scheme** means the strata scheme relating to registered Strata Plan No. 64622.
- (i) **Third Party** means any person who is not an Owner or Occupier of the Strata Scheme whether they are a company, business, entity or individual.

Interpretation

In this by-law, unless the context otherwise requires:

- (a) the singular includes plural and vice versa;
- (b) any gender includes the other genders;
- (c) any terms in the by-law will have the same meaning as those defined in the Act; and
- (d) references to legislation include references to amending and replacing legislation.

This by-law to prevail

If there is any inconsistency between this by-law and any other by-law applicable to the Strata Scheme, then the provisions of this by-law shall prevail to the extent of that inconsistency.

PART 3

CONDITIONS

- (a) An application for a Licence must be in writing to the Owners Corporation by an Occupier or Third Party for a Licence over common property;
- (b) The Owners Corporation reserves the right to decline in its absolute discretion any request by an Occupier or Third Party for a Licence over common property for any reason whatsoever; and
- (c) Any Licence so approved must:
 - (i) not allow any part of the Common Property to be used for any business, activity or industry which is contrary to any law, regulation, by-law, ordinance or the requirements of any Authority;
 - (ii) be on terms approved by the Owners Corporation and any Authority (if required); and
 - (iii) be in writing.

SPECIALLY RESOLVED that - The Owners-Strata Plan No 64622 approve the Licence to the owners of **Lots 140 and 141** in the terms of the Licence attached to the agenda for the meeting at **ANNEXURE "B"** and now forming part of the Minutes of this Meeting.

2.1 WORKS TO LOT 140 & 141:

AND

2.2 BYLAW LOT 140 & 141:

SPECIALLY RESOLVED pursuant to section 65A of the *Strata Schemes Management Act, 1996* (NSW) for the purpose of improving or enhancing the common property that - The Owners – Strata Plan No. 64622 authorise the carrying out of works to **Lots 140 and 141** in the manner as set out in this by-law:

A **MOTION** to **AMEND** the **MOTION** was moved and **SPECIALLY RESOLVED** that the following be inserted to the bylaw under **47.1**:

“Licensed Areas” means the areas detailed in the Licence Agreement.

Upon the **AMENDED MOTION** becoming the **MOTION** it was:

SPECIALLY RESOLVED pursuant to section 52 of the Strata Schemes Management Act 1996 that - The Owners – Strata Plan No 64622 make a by-law in favour of the proprietor of **Lots 140 and 141** in the strata scheme as per following:

Bylaw No 47 Exclusive Use of Common Property and Works Affecting Lots 140 and 141

DEFINITIONS

47.1 In this by-law, the following terms are defined to mean:

“Consent” means the individual Owners’ consent to this by-law in the form attached marked **“Annexure A”**.

“Licence Agreement” means a licence agreement between the Owners Corporation and the Owner as at the date of this by-law; a copy of which is attached marked **“Annexure B”**.

“Licensed Areas” means the areas detailed in the Licence Agreement.

“Owner” means the Owner for the time being lot 140 and lot 141 in Strata Plan 64622.

“Works” means the alterations and additions to be undertaken by the Owner to lots 140 and 141 or part of them and so much of the common property as is necessary to undertake the following:

- (a) installation of existing floor and wall tiling, and waterproofing membrane installed where necessary;
- (b) removal of the existing ceiling and installation of a new ceiling at the same height as the existing ceiling;
- (c) renovation works to the bathrooms, without relocation of the existing plumbing and the installation of waterproof membrane where necessary;
- (d) affixing a 600mm x 1200mm illuminated signage to the roof slab on each of the northern and southern end of the lot;
- (e) removal of existing stoves, fridges and counters and installation of new stoves, fridges and counters;
- (f) relocating existing electrical and plumbing outlets, being the removal of current outlets and installation of new outlets;
- (g) relocating current aluminum framed glazed sliding doors, glass, panels and framework on the eastern side of the lot so as to create an enclosed outdoor seating area;
- (h) removal of existing glazing on the northern and eastern sides of the lots and the installation of frameless glass fixed panels, swing doors and bi-fold doors;
- (i) installation of two fixed steel gates with glass infills and one lockable sliding gate on either side of the northern entrance;
- (j) installation of two lockable swing gates at the eastern entrance;

- (k) water-proofing and sound-proofing of the 'vergola' in manner to be decided after agreement by the Executive Committee;
- (l) installation of canopies within the lot but not on Kings Cross Rd with the material and colour of the canopies to be in keeping with the existing façade (Charcoal/Gray) of the lot; and
- (m) installation of a cold storage unit into the car spaces of lots 140 and 141, for the purpose of accommodating the Owner's tenant's needs as at the date of this by-law, with the appearance and dimensions of the cold storage unit to be agreed upon between the parties before installation.
- (n) Installation of doors and paneling above those doors to the entrance of the Retail Rubbish Room in order to fully secure the area.

all in accordance with the plans prepared by Luchetti Krelle dated 26 October 2011, being:

- (i) Drawing No. WD.000 – titled "DA Approval"
- (ii) Drawing No. WD.001 – titled "Site Plan"
- (iii) Drawing No. WD.100 – titled "Demolition Plan"
- (iv) Drawing No. WD.101 – titled "Floor Plan Proposed"
- (v) Drawing No. WD.102 – titled "Signage Plan Proposed" (plan and three photographs)
- (vi) Drawing No. WD.201 – titled "Proposed Elevations" (2 pages)
- (vii) Drawing titled "Materials Board"
- (viii) Drawing No. WD.200 – titled "Existing Elevations"

collectively referred to as "Plans", copies of which dated 26 October 2011 are attached and marked Annexure "A".

47.2 Where any terms used in this by-law are defined in the Strata Schemes Management Act 1996 (the "Act"), they will have the same meaning as those words are attributed under that Act.

RIGHTS

Subject to the Conditions of this by-law, the Owner will have:

- (a) a special privilege in respect of the common property to perform the Works and to erect and keep the Works to and on the common property; and
- (b) except the common property areas comprised in or occupied by the enclosed outdoor seating area and the illuminated signage referred to in the Licence Agreement, the exclusive right to use those parts of the common property which the Works occupy upon completion.
- (c) For clarity the Licensed Areas are to be occupied pursuant to the Licence Agreement between the Owner and the Owners Corporation, and subject to all the terms and conditions in that Licence Agreement.

CONDITIONS

Maintenance

47.3 The Owner must properly maintain and keep the common property to which the Works are erected or attached in a state of good and

serviceable repair.

- 47.4** The Owner must properly maintain and keep the Works in a state of good and serviceable repair and must replace the Works as required from time to time.

Documentation

- 47.5** The Owner must submit to the Owners Corporation the following documents relating to the Works:

- (a) development application plans and drawings;
- (b) specifications;
- (c) structural diagrams;
- (d) the executed Consent; and
- (e) any other document reasonably required by the Owners Corporation.

- 47.6** After completing the Works the Owner must deliver to the Owners Corporation the following documents relating to the Works:

- (a) certification by an engineer acceptable to the Owners Corporation as to the structural integrity of the Works; and
- (b) any other documents reasonably required by the Owners Corporation.

Approvals

- 47.7** All costs associated with obtaining approvals must be met by the Owner.

- 47.8** Before commencing the Works the Owner must obtain approval for the performance of the Works from:

- (a) the Executive Committee in respect of the illuminated sign referred to in 47.1(d) by provision to it of details of the wording, style and colour scheme of the sign;
- (b) the relevant consent authority under the Environmental Planning and Assessment Act; and
- (c) any other relevant statutory authority whose requirements apply to the Works.

Insurance

- 47.9** Before commencing the Works the Owner must effect the following insurances in the joint names of the Owner and the Owners Corporation:

- (a) contractors all works insurance;
- (b) workers compensation insurance; and
- (c) public liability insurance in the amount of \$20,000,000.

Performance of Works

- 47.10** In performing the Works the Owner must:

- (a) transport all construction materials, equipment, debris and other material in the manner reasonably directed by the Owners Corporation;
- (b) protect all areas of the strata scheme outside lots 140 and 141 from damage by the Works or by the transportation of

- construction materials, equipment, and debris, in the manner reasonably acceptable to the Owners Corporation;
- (c) keep all areas of common property outside lots 140 and 141 clean and tidy throughout the performance of the Works;
 - (d) only perform the Works at the times approved by the Owners Corporation;
 - (e) not create noise that causes discomfort, disturbance or interference with activities of any other occupier of the building;
 - (f) remove all debris resulting from the Works immediately from the building; and
 - (g) comply with the requirements of the Owners Corporation to comply with any by-laws and relevant statutory authority concerning the performance of the Works.

Liability

- 47.11** The Owner must lodge with the Owners Corporation a deposit of ten thousand dollars (\$10,000.00) to cover the cost of repair of any damage to the common property and cleaning of the common property caused or necessitated by the performance of the Works.
- 47.12** The Owner will be liable for any damage caused to any part of the common property as a result of the erection or attachment of the Works to the common property and will make good that damage immediately after it has occurred.

Indemnity

- 47.13** The Owner must indemnify the Owners Corporation against any loss or damage the Owners Corporation suffers as a result of the performance, maintenance or replacement of the Works on the common property including liability under section 65(6) in respect of any property of the Owner.

Cost of Works

- 47.14** The Works must be undertaken at the cost of the Owner.
Cost of By-Laws, Approvals and Certification
- 47.15** The Owner will indemnify the Owners Corporation for all of the costs of considering and making this by-law, approving any plans, drawings or other documents or obtaining certification of the Works (including legal costs) and will pay those amounts to the Owners Corporation when requested.

Licensed Contractor

- 47.16** The Works shall be done:
- (a) in a proper and workmanlike manner and by duly licensed contractors; and
 - (b) in accordance with the drawings and specifications (if any) approved by the local council and Owners Corporation.

Statutory Directions

- 47.17** In performing the Works the Owner must comply with all directions, orders and requirements of all relevant statutory authorities and must ensure and be responsible for compliance with such directions, orders and requirements by the Owner's servants, agents and contractors.
Owners Fixtures

47.18 The Work shall remain the Owner's fixtures.

Repeal, Revocation or Modification of By-Law

47.19 The special privileges granted in respect of the Licensed Areas will remain in force only until such time as the Licence Agreement expires or is terminated, or this by-law is repealed, revoked or modified (whichever occurs first).

Expiration or Termination of Licence Agreement

47.20 If the Licence Agreement expires or is terminated or otherwise comes to an end, the Owners at their cost immediately must:

- (a) remove the illuminated signage;
- (b) vacate the outdoor seating area; and
- (c) make good the Licensed Areas to the satisfaction of the Owners Corporation.

Right to Remedy Default

47.21 If the Owner fails to comply with any obligation under this by-law, **THEN** the Owners Corporation may:

- (a) carry out all work necessary to perform that obligation;
- (b) enter upon any part of the parcel to carry out that work; and
- (c) recover the costs of carrying out that work from the Owner.

Indemnity as to Moral Rights

47.21 The Owner agrees to indemnify the Owner's Corporation (which includes all officers including the Executive Committee, its agents and employees) against all actions claims, suits demands, damages, liabilities, costs or expenses relating to any claim the architect Ian Moore (or others) may have regarding any moral rights they have in relation to the Design and Architecture of the **ALTAIR** Building AND release and discharges the Owners Corporation (including the Executive Committee, its agents and employees) from any loss or liability incurred (directly or indirectly) from any claim they may have in regards to those moral rights.

4. EXECUTION OF LICENCE AGREEMENT:

RESOLVED That - The Owners – Strata Plan No 64622 delegate the function of executing the Licence to the Strata Managing Agent and apply the common seal to any required documents in accordance with s238.

The meeting closed at 7.17 pm

Note:

The Chairperson provided a presentation to the meeting on the status of the proposed works to Lots 140 & 141 including as well as a précis to the process of engagement of Grace Lawyers to review the proposed Motions, bylaws and Licence Agreement. In addition, an overall update of other issues affecting Altair at this time was provided.